UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

CHELSEA KOENIG, on behalf of herself and all others similarly situated, Plaintiff, v. PRIMANTI CORPORATION *et al* D/B/A PRIMANTI BROS.; DAVID HEAD; ANDREW TAUB; DEMETRIOS PATRINOS; JAMES CHU; NICHOLAS NICHOLAS; and DOE DEFENDANTS 1-10, Defendant.	Civil Action No.: **CLASS AND COLLECTIVE ACTION COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff Chelsea Koenig ("Koenig" or "Plaintiff"), on behalf of herself and all others similarly situated, alleges as follows:

INTRODUCTION

1. This is a class and collective action brought on behalf of "Tipped Employees" who work or have worked at restaurants operating under the trade name Primanti Bros. that are owned and operated and/or managed by Defendant Primanti Corporation, Defendant PLN Food Service Inc., Defendant Southside Food & Beverage Service, Inc., Defendant 2 South Market Place, Inc., Defendant Cranberry Food Associates, Defendant Greensburg Food Associates, Defendant Leesburg Food Service, Inc., Defendant Harmar Food Associates, Inc., Defendant Monroeville Food Associates, Inc., Defendant Moon Township Food Associates, Inc., Defendant North Versailles Food Service, Inc., Defendant Mt. Lebanon Food Associates, Inc., Defendant Clairton Boulevard Food Service, Inc., Defendant Steubenville Pike Food Associates, Inc., Defendant Primanti Bros. Maryland – Hagertown, LLC, Defendant Primanti Bros. West Virginia, LLC and Defendant Primanti Bros. West Virginia – Wheeling, LLC, (collectively, "Primanti Bros.," or the "Company") and David Head, Andrew Taub, Demetrios Patrinos, James Chu and Nicholas

Nicholas (collectively "Officer Defendants" and together with Primanti Bros. "Defendants"), and have been subject to the unlawful practices detailed herein.

2. As detailed below, upon information and belief, each of the Primanti Bros. entities maintain the same corporate address, and share common ownership and employment policies, including those relating to the compensation of Tipped Employees.

3. As such, upon information and belief, the employment practices complained of herein occurred at all of Primanti Bros. locations, as Defendants utilized common labor policies and practices at each of their locations. Accordingly, Defendants are responsible for the employment practices complained of herein.

4. According to the Company's website, there are "17 locations right around Pittsburgh, with more in Pennsylvania, Florida, Indiana, Maryland, Michigan, Ohio, and West Virginia . . ." *See* http://www.primantibros.com/story/ (last visited August 20, 2016). Indeed, there are 23 Primanti Bros. locations in the Commonwealth of Pennsylvania, twelve outside of Pennsylvania and two new locations on the way (with one in Indiana and another in Michigan). *See* http://www.primantibros.com/locations/ (last visited August 20, 2016).

5. Primanti Bros. employs individuals as "bartenders," "servers" ("waiters" and "waitresses"), "barbacks," "bussers," and "food runners" (collectively, "Tipped Employees"), who are and/or were subjected to Defendants' unlawful pay practices.

6. As explained in detail below, despite Primanti Bros. purported success, it systematically and willfully deprived Plaintiff and Tipped Employees of minimum wages in violation of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, ("FLSA") and the Pennsylvania Minimum Wage Act ("PMWA"), 43 P.S. § 333.101, *et seq.*, by, among other things, failing to satisfy the notice requirements of the tip credit provisions of the FLSA and PMWA.

7. Due to Defendants' unlawful failure to properly inform Tipped Employees of its intention to utilize a "tip credit", Defendants have improperly applied a "tip credit" against the wages paid to Plaintiff and current and former Tipped Employees, thus paying them less than the mandated minimum wage.

8. Moreover, as detailed below, Primanti Bros. violated the Pennsylvania Wage Payment and Collection Law, 43 Pa. S. § 260.1 *et seq*. ("WPCL"), and common law, by subjecting Tipped Employees to unlawful deductions from their wages to cover some of Defendants' business expenses, such as customer walkouts and cash shortages.

9. As a result of the aforementioned pay practices, Plaintiff and the members of the Classes (defined below) were illegally under-compensated for their work.

SUMMARY OF CLAIMS

10. Plaintiff brings this action as a collective action to recover unpaid wages, pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq*. ("FLSA" or the "Act").

11. In particular, Plaintiff brings this suit on behalf of the following similarly situated persons:

> All current and former Tipped Employees who have worked for Defendants in the United States within the statutory period covered by this Complaint, and elect to opt-in to this action pursuant to the FLSA, 29 U.S.C. § 216(b) (the "Collective Class").

12. In addition, Plaintiff also brings this action as a state-wide class action to recover unpaid wages, and failing to pay the applicable minimum wage, pursuant to the Pennsylvania Minimum Wage Act of 1968 ("PMWA").

13. Specifically, Plaintiff brings this suit on behalf of a class of similarly situated persons composed of:

> All current and former Tipped Employees who have worked for Primanti Bros. in the Commonwealth of Pennsylvania during the statutory period covered by this Complaint (the "PA Class").

14. The Collective Class and the PA Class are hereafter collectively referred to as the "Classes."

15. Plaintiff alleges on behalf of the Collective Class that they are: (i) entitled to unpaid minimum wages from Defendants for hours worked for which Defendants failed to comply with the notice provisions of the tip credit and pay the mandatory minimum wage, as required by law and (ii) entitled to liquidated damages pursuant to the FLSA, 29 U.S.C. § 201 *et seq.*

16. Plaintiff alleges on behalf of the PA Class that Primanti Bros. violated the PMWA by failing to comply with the tip credit provisions, as required by law, consequently failing to pay them the appropriate minimum wages for all hours worked.

PARTIES

17. Plaintiff Chelsea Koenig ("Plaintiff") is a resident of the Commonwealth of Pennsylvania who was employed by Primanti Bros. as a "bartender" in their Mt. Lebanon location (located at 1539 Washington Rd., Mt. Lebanon, Pa.) in the Commonwealth of Pennsylvania. While employed as a bartender, Defendant failed to compensate Plaintiff properly for all hours worked.

18. Pursuant to Section 216(b) of the FLSA, Plaintiff has consented in writing to be a plaintiff in this action. Her executed Consent To Sue form is attached hereto as Exhibit A.

19. Primanti Bros. owns and operates a string of full-service restaurants located across the United States. In addition, the Company also operates food service locations at each of the following sports arenas: Consol Energy Center; Heinz Field; and PNC Park. The Company maintains its corporate office at 2100 Wharton St., #720, Pittsburgh, Pa. In addition, the Company

maintains the website “www.primantibros.com.” At all relevant times during the statutory period covered by this Complaint, Defendant has transacted business within the Commonwealth of Pennsylvania, including within this district.

20. Defendant Primanti Corporation operates restaurants employing Tipped Employees under the trade name Primanti Bros. at the following locations: (i) 2550 Plank Road Commons, Altoona, PA 16601; (ii) 2430 North Fairfield Road, Beavercreek, OH 45431; (iii) Southland Crossings 6731 South Avenue Youngstown, OH 44512; (iv) 1249 Commerce Boulevard Dickson City, PA 18519; (v) Millcreek Mall 5800 Peach Street Unit #380 Erie, PA 16565; (vi) 5555 Youngstown-Warren Road Niles, OH 44446; (vii) 13871 Cabela Parkway Noblesville, IN 46060; (viii) 130 Hiester Street State College, PA 16801; (ix) Southland Center 23000 Eureka Road Taylor, MI 48180; (x) 400 Adios Drive The Street at the Meadows Washington, PA 15301; and (xi) 2151 South Queen Street York, PA 17402. Defendant Primanti Corporation maintains its office at 2100 Wharton Street No. 720, Pittsburgh, PA 15203.

21. Defendant PLN Food Service, Inc. operates a restaurant employing Tipped Employees under the trade name Primanti Bros. at the following location: 3803 Forbes Avenue Pittsburgh 15213. Defendant PLN Food Service, Inc. maintains its office at 2100 Wharton Street No. 720, Pittsburgh, PA 15203.

22. Defendant Southside Food & Beverage Service Inc. operates a restaurant employing Tipped Employees under the trade name Primanti Bros. at the following location: 1832 East Carson Street Pittsburgh, PA 15203. Defendant Southside Food & Beverage Service Inc. maintains its office at 2100 Wharton Street No. 720, Pittsburgh, PA 15203.

23. Defendant 2 South Market Place, Inc. operates a restaurant employing Tipped Employees under the trade name Primanti Bros. at the following location: 2 South Market Square

Pittsburgh, PA 15222. Defendant 2 South Market Place, Inc. maintains its office at 2100 Wharton Street No. 720, Pittsburgh, PA 15203.

24. Defendant Cranberry Food Associates operates a restaurant employing Tipped Employees under the trade name Primanti Bros. at the following location: 200 Executive Drive Cranberry, PA 16066. Defendant Cranberry Food Associates maintains its office at 2100 Wharton Street No. 720, Pittsburgh, PA 15203.

25. Defendant Greensburg Food Associates operates a restaurant employing Tipped Employees under the trade name Primanti Bros. at the following location: 830 East Pittsburgh Street Greensburg, PA 15601. Defendant Greensburg Food Associates maintains its office at 2100 Wharton Street No. 720, Pittsburgh, PA 15203.

26. Defendant Leesburg Food Service Inc. operates a restaurant employing Tipped Employees under the trade name Primanti Bros. at the following location: Grove City Premium Outlets Leesburg-Grove City Rd., Grove City, PA 16127. Defendant Leesburg Food Service Inc. maintains its office at 2100 Wharton Street No. 720, Pittsburgh, PA 15203.

27. Defendant Harmar Food Associates, Inc. operates a restaurant employing Tipped Employees under the trade name Primanti Bros. at the following location: 6 Anchor Drive Pittsburgh, PA 15238. Defendant Harmar Food Associates, Inc. maintains its office at 2100 Wharton Street No. 720, Pittsburgh, PA 15203.

28. Defendant Monroeville Food Associates, Inc. operates a restaurant employing Tipped Employees under the trade name Primanti Bros. at the following location: 3847 Northern Pike Monroeville, PA 15146. Defendant Monroeville Food Associates, Inc. maintains its office at 2100 Wharton Street No. 720, Pittsburgh, PA 15203.

29. Defendant Moon Township Food Associates, Inc. operates a restaurant employing Tipped Employees under the trade name Primanti Bros. at the following location: 8651 University Blvd. Moon Township, PA 15108. Defendant Moon Township Food Associates, Inc. maintains its office at 2100 Wharton Street No. 720, Pittsburgh, PA 15203.

30. Defendant North Versailles Food Service, Inc. operates a restaurant employing Tipped Employees under the trade name Primanti Bros. at the following location: 921 E. Pittsburgh & McKeesport Blvd. North Versailles, PA 15137. Defendant North Versailles Food Service, Inc. maintains its office at 2100 Wharton Street No. 720, Pittsburgh, PA 15203.

31. Defendant Mt. Lebanon Food Associates, Inc. operates a restaurant employing Tipped Employees under the trade name Primanti Bros. at the following location: 1539 Washington Rd. Mt. Lebanon, PA 15228. Defendant Mt. Lebanon Food Associates, Inc. maintains its office at 2100 Wharton Street No. 720, Pittsburgh, PA 15203.

32. Defendant Clairton Boulevard Food Service, Inc. operates a restaurant employing Tipped Employees under the trade name Primanti Bros. at the following location: 830 Clairton Blvd., Rt. 51 Pittsburgh, PA 15236. Defendant Clairton Boulevard Food Service, Inc. maintains its office at 2100 Wharton Street No. 720, Pittsburgh, PA 15203.

33. Defendant Steubenville Pike Food Associates, Inc. operates a restaurant employing Tipped Employees under the trade name Primanti Bros. at the following location: 4501 Steubenville Pike Pittsburgh, PA 15205. Defendant Steubenville Pike Food Associates, Inc. maintains its office at 2100 Wharton Street No. 720, Pittsburgh, PA 15203.

34. Defendant Primanti Bros. Maryland – Hagertown, LLC operates a restaurant employing Tipped Employees under the trade name Primanti Bros. at the following location:

17301 Valley Mall Hagerstown, MD 21740. Defendant Primanti Bros. Maryland – Hagertown, LLC maintains its office at 2100 Wharton Street No. 720, Pittsburgh, PA 15203.

35. Defendant Primanti Bros. West Virginia, LLC operates a restaurant employing Tipped Employees under the trade name Primanti Bros. at the following location: 402 Suncrest Centre Drive Morgantown, WV 26505. Defendant Primanti Bros. West Virginia, LLC maintains its office at 2100 Wharton Street No. 720, Pittsburgh, PA 15203.

36. Defendant Primanti Bros. West Virginia – Wheeling, LLC operates a restaurant employing Tipped Employees under the trade name Primanti Bros. at the following location: 255 Cabela Drive Triadelphia, WV 26059. Defendant Primanti Bros. West Virginia – Wheeling, LLC maintains its office at 2100 Wharton Street No. 720, Pittsburgh, PA 15203.

37. Defendant David Head is an officer of Primanti Bros. Specifically, Defendant Head is listed as the President and Secretary on the corporate filings for each of the Primanti Bros. entities. In these corporate capacities, upon information and belief, Defendant Head exercises sufficient control over the labor policies and practices of the Primanti Bros. entities complained of herein to be considered the employer of Plaintiff and the Classes for the purposes of the FLSA and PA State Laws.

38. Defendant Andrew Taub is an officer of Primanti Bros. In his corporate capacity, upon information and belief, Defendant Taub exercises sufficient control over the labor policies and practices of the Primanti Bros. entities complained of herein to be considered the employer of Plaintiff and the Classes for the purposes of the FLSA and PA State Laws.

39. Defendant Demetrios Patrinos is an officer of Primanti Bros. In his corporate capacity, upon information and belief, Defendant Patrinos exercises sufficient control over the

labor policies and practices of the Primanti Bros. entities complained of herein to be considered the employer of Plaintiff and the Classes for the purposes of the FLSA and PA State Laws.

40. Defendant James Chu is an officer of Primanti Bros. In his corporate capacity, upon information and belief, Defendant Chu exercises sufficient control over the labor policies and practices of the Primanti Bros. entities complained of herein to be considered the employer of Plaintiff and the Classes for the purposes of the FLSA and PA State Laws.

41. Defendant Nicholas Nicholas is an officer of Primanti Bros. In his corporate capacity, upon information and belief, Defendant Nicholas exercises sufficient control over the labor policies and practices of the Primanti Bros. entities complained of herein to be considered the employer of Plaintiff and the Classes for the purposes of the FLSA and PA State Laws.

42. Upon information and belief, Defendants are a single and joint employer with a high degree of interrelated and unified operations, sharing common officers. Each of these Defendants share the common labor policies and practices complained of herein.

43. Upon information and belief the sole reason for separate corporate entities was to limit the liability of Defendants. Evidencing the interrelation and unified operation of the Primanti Bros. entities, each of the entities maintain the same corporate address with the same officers.

44. Plaintiff is unaware of the names and the capacities of those defendants sued as DOES 1 through 10 but will seek leave to amend this Complaint once their identities become known to Plaintiff. Plaintiff believes there are additional Primanti Bros. entities employing Tipped Employees that have not been identified yet. Upon information and belief, Plaintiff alleges that at all relevant times each defendant was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the Defendants. In engaging in the alleged conduct herein, defendants acted in the course, scope of, and in furtherance of the aforementioned relationship.

JURISDICTION AND VENUE

45. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 201 *et seq*.

46. Further, this Court also has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367 because those claims derive from a common nucleus of operative facts.

47. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) as a substantial part of the acts or omissions giving rise to the claims alleged herein occurred within this judicial district, and Defendants are subject to personal jurisdiction in this district.

48. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

FACTUAL ALLEGATIONS

49. The crux of the FLSA and PA State Laws is, *inter alia*, that all employees are entitled to be paid mandated minimum wages for all hours worked.

50. Contrary to these basic protections, Plaintiff and the members of the Classes were deprived of the mandated minimum wage for all hours they worked.

51. Plaintiff and the members of the Classes are, or were, Tipped Employees employed by Defendants.

52. According to the Company's website, there are at least 20 restaurants operating in the Commonwealth of Pennsylvania. *See* http://www.primantibros.com/locations/ (last visited August 20, 2016).[1]

[1] This does not include the three facilities operating at the three principal sports arenas in Pittsburgh (Consol Energy Center, Heinz Field, and PNC Park). Upon information and belief, these three locations do not utilize Tipped Employees. Of course, should discovery reveal that

53. Upon information and belief, all of the Defendants' locations are/were operated under uniform policies/procedures applicable to all members of the Classes, including subjecting Tipped Employees to the unlawful pay practices complained of herein.

54. Evidencing this fact, on the Company's website, an individual is able to apply online "for all locations" and prospective job seekers are invited to experience "growth opportunity with a unique and sassy brand" by becoming "part of the Primanti Bros. team" *See* http://www.primantibros.com/jobs/ (last visited August 20, 2016).

55. As such, upon information and belief, the employment practices complained of herein occurred at all Primanti Bros. locations nationwide and within the Commonwealth as Defendants utilized common labor policies and practices at each of their locations. Accordingly, Defendants are responsible for the employment practices complained of herein.

Plaintiff's Experience Working For Defendants

56. As set forth above, Plaintiff was employed by Primanti Bros. as a "bartender" in its Mt. Lebanon location in the Commonwealth of Pennsylvania. Plaintiff worked at this location from in or about May 2012 through the end of September 2013.

57. Plaintiff was paid an hourly cash wage rate from Priamanti Bros. and earned tips from customers who chose to leave her a gratuity.

58. Plaintiff's hourly wage rate from Primanti Bros. was $2.83. Plaintiff does not ever recall her hourly wage being raised above $2.83 for any day she worked for Primanti Bros., irrespective of how little tips she earned or the type of work she performed.

Tipped Employees did work at these locations during the statutory period, Plaintiff reserves the right to include said locations in forthcoming motions for class and collective certification.

59. For the last several months of her employment with Primanti Bros., Plaintiff typically worked at least four (4) days per week. Plaintiff typically worked on Monday, Wednesday, Friday, and Sunday of each week.

60. For her Friday and Sunday shifts, Plaintiff typically worked an eight (8) hour shift. On Mondays and Wednesdays, due to her seniority, Plaintiff was usually the first bartender cut. As such, her shift during these days was much shorter, sometimes lasting as little as three (3) hours. In total, Plaintiff estimates that she worked approximately twenty-five (25) hours per week.

61. Plaintiff recorded her work time by logging into Primanti Bros.' timekeeping system through the point-of-sale ("POS") system.

62. The precise amount of time Plaintiff recorded as working each week, upon information and belief, is maintained in Defendants' employment and/or payroll records.

63. In addition, to this recorded time, Defendants also required Plaintiff and Tipped Employees to attend staff meetings which were not recorded in Defendants' timekeeping system. As such, Plaintiff received no compensation for attending these meetings.

64. Plaintiff believes these staff meetings were held on an "as needed" basis and were used to address such topics as menu changes, promotions, and/or customer complaints. Plaintiff estimates that these meetings lasted anywhere from thirty (30) to ninety (90) minutes and were held, on average, three (3) to four (4) times per year.

65. This "off-the-clock" work ("OTC work") was not included in Plaintiff's estimate of hours worked, nor was it included in Primanti Bros.' calculation of payment wages owed to Plaintiff or other Tipped Employees.

66. Plaintiff does not recall any other Tipped Employee noting any material differences between the way the Mt. Lebanon location and other Primanti Bros. locations operated.

The Tip Credit Provision & Requirements

FLSA Requirements

67. Rather than pay its Tipped Employees the applicable minimum wage (either the applicable state minimum wage or the federal minimum wage, whichever is higher), Defendants chose to take a tip credit and pay these employees less than the applicable minimum wage.

68. Under applicable law, in certain circumstances, it is permissible for an employer to take a tip credit and pay its employees less than the mandated minimum wage, provided that the employee's tips received from customers plus the tip credit wage paid by the employer equals at least the applicable minimum wage.[2]

69. According to the Department of Labor's ("DOL") Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act (FLSA) ("Fact Sheet #15"):

> the maximum tip credit that an employer can currently claim under the FLSA is $5.12 per hour (the minimum wage of $7.25 minus the minimum required cash wage of $2.13).

70. As is made plain in Fact Sheet #15, in order to claim a tip credit, the employer must comply with five strict notification requirements.

---

[2] An employer is not relieved of their duty to pay an employee wages at least equal to the minimum wage by virtue of taking a tip credit or by virtue of the employee receiving tips from customers in an amount in excess of the applicable minimum wage. That is, an employer in the restaurant industry must pay the employee wages at least equal to the minimum wage or equal to the minimum wage less the tip credit, provided the tips claimed exceed the tip credit. Under no circumstances is the employer relieved of paying at least the minimum wage for all hours worked, regardless of how much an employee earns in tips.

71. First, the employer must notify the employee of the amount of the cash wage the employer is paying the Tipped Employee and that amount must equal at least $2.13 per hour.

72. Second, the employer must notify the Tipped Employee of the amount the employer is claiming as a tip credit. In accordance with the FLSA, the tip credit claimed cannot exceed $5.12 per hour.

73. Third, the employer must inform the Tipped Employee that the tip credit claimed cannot exceed the actual amount of tips received by the employee. In effect, the employer must inform the employee that the employee must still earn the mandated minimum of $7.25 per hour between the amount of the tip credit taken by the employer and the amount of tips earned by the employee.

74. Fourth, the employer must notify the Tipped Employee that all tips received are to be retained by the employee except for a valid tip pooling arrangement.

75. Finally, the Tipped Employee must be informed by the employer that the tip credit will not apply unless the employee has been informed of these provisions.

76. An employer bears the burden of showing that it has satisfied all of the notification requirements before any tips can be credited against the employee's hourly wage.[3] If an employer cannot demonstrate its compliance with this notification requirement, no credit can be taken and the employer is liable for the full minimum wage.

77. Further, where a tipped employee earns less in tips than the tip credit claimed, the employer is required to make up the difference. Stated another way, if a tipped employee earns

---

[3] Courts have strictly construed this notification requirement. Accordingly, some courts have held that a generic governmental poster (which is required by the DOL) does not satisfy the tip credit notification requirement.

less than $5.12 per hour in tips (the maximum tip credit permissible where the employer pays the employee $2.13 per hour), the employer must raise that tipped employee's hourly cash component the necessary amount above $2.13 per hour so as to ensure that the employee earns at least $7.25 per hour – the mandated minimum wage.

78. As set forth herein, Defendants failed to comply with certain of the FLSA's provisions regarding the claiming of a tip credit.

Pennsylvania's Requirements

79. Pennsylvania state law has a substantially similar requirement to the FLSA's tip notification requirements. *See* 43 P.S. § 333.103(d).

80. Importantly, however, Pennsylvania mandates a higher minimum cash wage and requires employers to pay at least $2.83 per hour. Thus, under Pennsylvania law, the maximum tip credit is $4.42 per hour.[4]

81. As such, an employer cannot be said to have complied with Pennsylvania's tip credit notification requirements where the employer simply relies on United States Department of Labor mandated posters, as said posters do not explicitly identify the tip credit amount in Pennsylvania (as it differs from the FLSA tip credit amount).

82. In addition, 34 Pa. Code § 231.34 also requires employers to maintain payroll records that contain the following information:

(1) A symbol or letter placed on the pay records identifying each employee whose wage is determined in part by tips;

[4] Like the FLSA, Pennsylvania law states that the tip credit claimed by the employer cannot exceed the amount of tips actually received by the employee. *See* 43 P.S. § 333.103(d).

(2) Weekly or monthly amount reported by the employee, to the employer, of tips received. This may consist of reports made by the employees to the employer on IRS Form 4070;

(3) Amount by which the wages of each tipped employee have been deemed to be increased by tips, as determined by the employer, not in excess of 45% of the applicable statutory minimum wage until January 1, 1980 and thereafter 40% of the applicable statutory minimum wage. The amount per hour which the employer takes as a tip credit shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding week;

(4) Hours worked each workday in any occupation in which the tipped employee does not receive tips and total daily or weekly straight-time payment made by the employer for such hours; and

(5) Hours worked each workday in occupations in which the employee received tips and total daily or weekly straight-time earnings for the hours.

Defendants' Failure to Notify Tipped Employees

83. As explained above, the DOL has very specific requirements regarding what an employer must notify his/her employee of if that employer intends to claim a tip credit.

84. Rather than comply with the notification requirements set forth in Fact Sheet #15, Defendants chose to simply pay their Tipped Employees $2.83 per hour. In short, Defendants failed to inform their Tipped Employees of (i) their intention to take the tip credit, and (ii) the amount Defendants intended to claim as a tip credit.

85. The Third Circuit and district courts across the country have held that where an employer fails to satisfy any one of the notification requirements, including paying employees for

all hours worked, that employer forfeits the tip credit and must pay the employee the full minimum wage.

86. Indeed, Plaintiff does not ever recall being notified by Primanti Bros. that it intended to take a "tip credit," nor how much that amount would be. Evincing the magnitude of Defendants' abject failure to notify Tipped Employees of their intention to take a tip credit, until recently, Plaintiff never even heard the term "tip credit."

87. Primanti Bros. also failed to comply with 43 P.S. 231.34 insofar as it failed to notify employees in writing whenever the tip credit claimed by Defendants changed. Rather, Defendants took the maximum tip credit permissible irrespective of whether its Tipped Employee actually earned sufficient tips to substantiate the tip credit claimed.

88. Primanti Bros. also failed to comply with 43 P.S. 231.34 insofar as it failed to notify employees in writing of the hours worked where the Tipped Employee did not receive tips. Rather, Defendants took the maximum tip credit permissible for every hour worked by its Tipped Employees, including Plaintiff, irrespective of whether its Tipped Employees (i) actually earned sufficient tips to substantiate the tip credit claimed or (ii) whether the employees were engaged in tip generating work.

Additional Evidence of Defendant's Failure To Comply With The Tip Credit Provisions

89. Due to Defendants requiring Plaintiff and other Tipped Employees to perform OTC work (including, for example, attending staff meetings), Defendants cannot claim any tip credit as they did not pay their employees at least $2.83 for every hour worked.

90. Further, Defendants also required Tipped Employees to perform non-tip generating work. Such non-tip generating work included what is commonly referred to as "side work." Such work included prep work at the beginning of the shift (prepping the work station and stocking

items), running side work (cleaning the work area and restocking items that customers used) and closing side work (breaking down and cleaning work area at end of shift).

91. This non-tip generating side work comprised a substantial portion of the Tipped Employees' shifts.

92. For example, Plaintiff estimates that she spent approximately 30% of each of her shifts performing side work. Indeed, when she closed the restaurant she would routinely have customers leave at 1:30 a.m. (last call) and would perform non-tip generating work until approximately 3:00 a.m. when she left.

93. As Fact Sheet #15 makes clear, "where a tipped employee spends a substantial amount of time (in excess of 20 percent in the workweek) performing" non-tip generating work, "no tip credit may be taken for the time spent in such duties."

94. At no time did Defendants have Plaintiff or other Tipped Employees clock in under a different code or pay these individuals the full minimum wage, instead electing to continue to pay them the minimum cash wage and continuing to claim the tip credit despite the fact that these employees could not earn tips during this time.

95. Such conduct constitutes a violation of 43 P.S. 231.34 insofar as Primanti Bros. failed to record the hours where Plaintiff and the other Tipped Employee were engaged in non-tip generating work.

96. Further, Defendants required Tipped Employees, including Plaintiff, to cover customer walk-outs and cash shortages. To pay for these items, Tipped Employees are required to forfeit a portion of their tips to cover these costs. The Department of Labor considers such conduct to be a clear violation of the FLSA. *See* Fact Sheet 16 ("Typical Problems").

97. Plaintiff alleges that each of the above actions was done willfully by Defendants. Indeed, it was commonly known that Tipped Employees were required to pay for customer walk-outs and cash shortages as such incidents were considered the Tipped Employee's fault by Defendants.

CLASS & COLLECTIVE ACTION ALLEGATIONS

98. Plaintiff brings this action on behalf of the Collective Class as a collective action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 207 and 216(b). Plaintiff also brings this action as a class action pursuant to Fed. R. Civ. P. 23 on behalf of herself and the PA Class for claims under the PA State Laws.

99. The claims under the FLSA may be pursued by those who opt-in to this case pursuant to 29 U.S.C. §216(b). The claims brought pursuant to the PA State Laws may be pursued by all similarly-situated persons who do not opt-out of the PA Class pursuant to Fed.R.Civ.P. 23.

100. Upon information and belief, the members of each of the Classes are so numerous that joinder of all members is impracticable. While the exact number of the members of these Classes is unknown to Plaintiff at this time, and can only be ascertained through appropriate discovery, Plaintiff believes there are over 30 individuals in each of the Classes.[5]

101. Defendants have acted or have refused to act on grounds generally applicable to the Classes, thereby making final injunctive relief or corresponding declaratory relief with respect to the Classes as a whole, appropriate.

[5] Indeed, Plaintiff believes that she worked with, on average, 10-15 Tipped Employees each shift she worked and that there were at least 30 total Tipped Employees who worked for Defendants at the Mt. Lebanon location alone when she left.

102. The claims of Plaintiff are typical of the claims of the Classes she seeks to represent. Plaintiff and the members of the Classes work or have worked for Defendants and were subject to the same compensation policies and practices.

103. Common questions of law and fact exist as to the Classes that predominate over any questions only affecting them individually and include, but are not limited to, the following:

(a) whether Defendants have failed to pay the full minimum wage for each hour worked;

(b) whether Defendants satisfied each of the requirements in order to claim a tip credit against each hour worked;

(c) whether Defendants were precluded from claiming the tip credit during the period encompassed by this Complaint; and

(d) whether Plaintiff and members of the Classes are entitled to compensatory damages, and if so, the means of measuring such damages.

104. Plaintiff will fairly and adequately protect the interests of the Classes as her interests are aligned with those of the members of the Classes. Plaintiff has no interests adverse to the Classes she seeks to represent, and has retained competent and experienced counsel.

105. The class action/collective action mechanism is superior to other available methods for a fair and efficient adjudication of the controversy. The damages suffered by individual members of the Classes may be relatively small when compared to the expense and burden of litigation, making it virtually impossible for members of the Classes to individually seek redress for the wrongs done to them.

106. Plaintiff and the Classes she seeks to represent have suffered and will continue to suffer irreparable damage from the illegal policy, practice and custom regarding Defendant's pay practices.

107. Defendants have violated and, continue to violate, the FLSA, 29 U.S.C. §§ 201 *et seq*. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a) and willful violation of the PMWA.

FIRST CLAIM FOR RELIEF
FAIR LABOR STANDARDS ACT MINIMUM WAGE VIOLATIONS
(On Behalf of the Collective Class)

108. Plaintiff, on behalf of herself and the Collective Class, realleges and incorporates by reference the paragraphs above as if they were set forth again herein.

109. At all relevant times, Primanti Bros. has had gross revenues in excess of $500,000.

110. At all relevant times, Primanti Bros. has been and continues to be, an employer engaged in interstate commerce, within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

111. At all relevant times, Primanti Bros. has employed, and/or continues to employ, Plaintiff and each of the Collective Class Members within the meaning of the FLSA.

112. Pursuant to Primanti Bros. compensation policies, rather than pay Tipped Employees the federally-mandated minimum wage, Defendant took a tip credit and paid Tipped Employees only the tip-credit wage.

113. Primanti Bros. has violated and, continue to violate, the FLSA, 29 U.S.C. §§ 201 *et seq*. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

114. Due to Primanti Bros.' FLSA violations, Plaintiff, on behalf of herself and the members of the Collective Class, are entitled to recover from the Defendants, compensation for

unpaid wages; an additional equal amount as liquidated damages; and reasonable attorneys' fees and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

SECOND CLAIM FOR RELIEF
PENNSYLVANIA MINIMUM WAGE ACT– MINIMUM WAGE VIOLATIONS
(On Behalf of the PA Class)

115. Plaintiff, on behalf of herself and the members of the PA Class, realleges and incorporates by reference the paragraphs above as if they were set forth again herein.

116. At all relevant times, Primanti Bros. has employed, and/or continues to employ, Plaintiff and each of the PA Class Members within the meaning of the PMWA.

117. Pursuant to Primanti Bros.' compensation policies, rather than pay Tipped Employees the Pennsylvania mandated minimum wage, Primanti Bros. improperly took a tip credit and paid Tipped Employees at a rate well below the Pennsylvania minimum wage.

118. Pursuant to Primanti Bros.' compensation policies, rather than pay Tipped Employees the required minimum wage in Pennsylvania, Primanti Bros. took a tip credit and paid Tipped Employees only the tip-credit wage.

119. At relevant times in the period encompassed by this Complaint, Primanti Bros. had a willful policy and practice of failing to satisfy the notification requirements in order for Primanti Bros. to claim the tip credit.

120. As a result of Primanti Bros.' willful practices, Primanti Bros. was not entitled to claim the tip credit and pay Plaintiff and the members of the PA Class less than the Pennsylvania minimum wage for all hours worked.

121. Defendants have violated and, continue to violate, the PMWA, 43 Pa. C.S.C. § 333.101 *et seq.*

122. Due to the Defendants' violations, Plaintiff, on behalf of herself and the members of the PA Class, are entitled to recover from Defendant the amount of unpaid minimum wages, attorneys' fees and costs.

THIRD CLAIM FOR RELIEF
PENNSYLVANIA WAGE PAYMENT COLLECTION LAW
(On Behalf of the PA Class)

123. Plaintiff, on behalf of herself and the members of the PA Class, realleges and incorporate by reference the paragraphs above as if they were set forth again herein.

124. At all relevant times, Primanti Bros. has employed, and/or continues to employ, Plaintiff and each of the PA Class Members within the meaning of the WPCL.

125. Pursuant to the WPCL, 43 Pa. S. § 260.1 *et seq.* Plaintiff and the members of the PA Class were entitled to receive all compensation due and owing to them on their regular payday.

126. As a result of Primanti Bros.' unlawful policies, Plaintiff and the members of the PA Class have been deprived of compensation due and owing.

127. Further, due to Defendants' policy of deducting amounts from the tips of Plaintiff and the PA Class to offset business losses/expenses, Plaintiff and the PA Class were subject to improper deductions from their compensation.

128. Plaintiff, on behalf of herself and the members of the PA Class, are entitled to recover from Primanti Bros. the amount of unpaid compensation, and an additional amount of 25% of the unpaid compensation as liquidated damages.

FOURTH CLAIM FOR RELIEF
PENNSYLVANIA COMMON LAW – UNJUST ENRICHMENT
(On Behalf of the PA Class)

129. Plaintiff, on behalf of herself and the PA Class Members, realleges and incorporate by reference the paragraphs above as if they were set forth again herein.

130. Plaintiff and the members of the PA Class were employed by Primanti Bros. within the meaning of the PA State Laws.

131. At all relevant times, Defendants had a willful policy and practice of denying Tipped Employees their full share of gratuities.

132. During the class period covered by this Complaint, Plaintiff and Tipped Employees were subjected to unlawful deductions from their gratuities.

133. Primanti Bros. retained the benefits of its unlawful deductions from the gratuities from Plaintiff and Tipped Employees under circumstances which rendered it inequitable and unjust for Defendant to retain such benefits.

134. Primanti Bros. was unjustly enriched by subjecting Plaintiff and Tipped Employees to such unlawful deductions.

135. As a direct and proximate result of Defendants' unjust enrichment, Plaintiff and the members of the PA Class have suffered injury and are entitled to reimbursement, restitution and disgorgement from Primanti Bros. of the benefits conferred by Plaintiff and the PA Class. Plaintiff, on behalf of herself and the members of the PA Class, are entitled to reimbursement, restitution and disgorgement of monies received by Primanti Bros.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and/or on behalf of herself and all other similarly situated members of the Collective Class and members of the PA Class respectfully requests the Court grant the following relief:

A. Designation of this action as a collective action on behalf of the Collective Class, and prompt issuance of notice pursuant to 29 U.S.C. §216(b), apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. §216(b);

B. Designation of the action as a class action under F.R.C.P. 23 on behalf of the PA Class;

C. Designation of Plaintiff as representative of the Collective Class and the PA Class;

D. Designation of Plaintiff's counsel as class counsel for the Collective Class and the PA Class;

E. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and PMWA;

F. An injunction against Defendants and their officers, agents, successors, employees, representatives and any and all persons acting in concert with it, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;

G. An award of unpaid minimum wages to Plaintiff and the members of the Classes;

H. An award of liquidated damages to Plaintiff and members of the Classes;

I. An award of costs and expenses of this action together with reasonable attorneys' and expert fees to Plaintiff and members of the Classes; and

J. Such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all questions of fact raised by the complaint.

Dated: September 9, 2016

Respectfully submitted,

By: /s/ Gary F. Lynch

CARLSON LYNCH SWEET KILPELA & CARPENTER, LLP
Gary F. Lynch (PA ID# 56887)
Benjamin J. Sweet
Jamisen A. Etzel
1133 Penn Ave, 5th Floor
Pittsburgh, PA 15222
T: 412-322-9243
F: 412-231-0246
glynch@carlsonlynch.com
bsweet@carlsonlynch.com
jetzel@carlsonlynch.com

CONNOLLY WELLS & GRAY, LLP
Gerald D. Wells, III
Robert J. Gray
2200 Renaissance Blvd., Suite 308
King of Prussia, PA 19406
Telephone: 610-822-3700
Facsimile: 610-822-3800
gwells@cwg-law.com
rgray@cwg-law.com

KEHOE LAW FIRM, P.C.
Michael K. Yarnoff
Two Penn Center Plaza
1500 JFK Boulevard, Suite 1020
Philadelphia, PA 19102
Telephone: 215-792-6676
Facsimile: 215-792-6676
myarnoff@kehoelawfirm.com

Attorneys for the Plaintiff

EXHIBIT A –
CONSENT FORM

CONSENT TO BECOME A PARTY PLAINTIFF

1. I, Chelsea Koenig, consent to sue as a Plaintiff in this action, pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.*

2. During the applicable period, I was an employee of Defendant and was not paid properly for all hours worked.

3. By my signature below, I hereby authorize counsel to prosecute the claims in my name and on my behalf, in this action, for Defendant's failure to pay all wages due and owing in accordance with federal law.

9/9/2016
Date

Chelsea Koenig
Print Name

Chelsea Koenig
Signature